



Illinois Department of Transportation

Memorandum

To: All District Engineers R. Anderson G. Gould J. Hill
D. McMurray D. Schinneer M. Buehler M. Dahl

From: William T. Sunley

Subject: Approved IDOT Wetlands Action Plan

Date: June 1, 1998

Attached for your use is one copy of the approved IDOT Wetlands Action Plan. The Plan is dated April 15, 1998 and is effective April 21, 1998, the date of final signature. This Plan is required by the Interagency Wetland Policy Act of 1989 and associated Administrative Rules (17 Ill. Adm. Code 1090). It establishes a formal procedural framework through which actions undertaken or funded by IDOT that may adversely affect wetlands will comply with the Wetlands Act and Rules. BDE will soon be promulgating additional policies and procedures to define responsibilities within the Division of Highways for implementing the various provisions of the Wetlands Action Plan for affected projects. Questions concerning implementation of the Wetlands Action Plan in the interim should be directed to the BDE.

As provided in the "Natural Resource Review and Coordination Agreement Between IDNR and IDOT," approved in 1995, the Bureau of Design and Environment (BDE) will continue to serve as the primary point of contact for coordination of wetlands information with the Illinois Department of Natural Resources (IDNR).

Attachment

A handwritten signature in black ink that reads "Bill Sunley". The signature is written in a cursive style with a prominent "B" at the beginning.

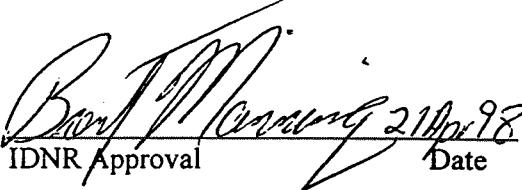
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Illinois Department of Transportation
WETLANDS ACTION PLAN
April 15, 1998



IDOT Approval

4/15/98
Date



IDNR Approval

21 Apr 98
Date

I. Purpose

The purpose of this Action Plan is to set forth a framework of policy and procedures for the Illinois Department of Transportation (IDOT) that will establish compliance with the goals of the Interagency Wetland Policy Act of 1989 (the Act) and the "Implementing Procedures for the Interagency Wetland Policy Act" (17 Ill. Adm. Code 1090).

II. Applicability

This Action Plan applies to all IDOT and IDOT pass-through funded projects involving adverse impacts to wetlands except those actions specifically exempted. Approvals to proceed with construction of non-exempted actions adversely affecting wetlands will be contingent on demonstrating compliance with this Plan. For IDOT pass-through funded projects, the entity receiving the pass-through funds will be responsible for complying with the provisions of this Plan. For such projects, IDOT may require the entity receiving the pass-through funds to assume responsibility for necessary wetlands-related studies and coordination with the Illinois Department of Natural Resources (IDNR) which this Plan describes as IDOT responsibilities.

In accordance with 17 Ill. Admin. Code 1090.20 (Implementing Procedures for the Interagency Wetland Policy Act), actions that may involve adverse wetlands impacts include, but are not limited to:

- The alteration, removal, excavation, or dredging of soil, sand, gravel, minerals, organic matter, vegetation, or naturally occurring materials of any kind from a wetland;
- The discharge or deposit of fill material or dredged material into a wetland;
- The alteration of existing drainage characteristics, sedimentation patterns, or flood retention characteristics of a wetland;
- The disturbance of the water level or water table of a wetland;
- The destruction or removal of plant life that would alter the character of a wetland, except for activities undertaken in accordance with the Illinois Noxious Weed Act; and
- The transfer of State-owned wetlands to any entity other than another State agency.

Compliance with this Action Plan is not required for any construction, land management, or other activity funded or performed by IDOT which will *not* result in an adverse impact to a wetland. In addition, in accordance with 17 Ill. Admin. Code 1090.20, the following activities also are specifically excluded from the State wetlands compliance requirements:

- Activities undertaken for the maintenance of existing ponds, storm water detention basins and channels, drainage ditches or navigation channels
- Installation of signs, lighting and fences and the mowing of vegetation within existing maintained rights-of-way, provided such actions do not jeopardize the existence of a

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threatened or endangered species, Illinois Natural Area Inventory Site, or the designated essential habitat of a threatened or endangered species

- Repair and maintenance of existing buildings, facilities, lawns, and ornamental plantings
- Issuance of permits and licenses
- Construction projects that were let for bidding prior to May 6, 1996
- Application of media (including deicing chemicals) on the surface of existing roads for the purposes of public safety
- Non-surface disturbing surveys and investigations for construction, planning, maintenance or location of environmental resources

After initial approval by IDNR, this Plan shall continue in effect, subject to renewal through IDNR every 4 years in accordance with 17 Ill. Adm. Code 1090.40(d).

III. Consistency with Existing IDOT Policies and Procedures

Upon acceptance by IDNR, this Action Plan becomes IDOT's framework for compliance with the Interagency Wetland Policy Act. To the extent that there are any inconsistencies between this Plan and existing IDOT Departmental Orders, policies, and operating procedures regarding wetlands, this Action Plan supersedes such Orders, policies, and procedures until they are revised to achieve consistency.

IV. Identification and Delineation of Wetlands

At the earliest practical stage in the project planning process, an assessment will be made of the extent to which wetlands will be affected. Unless an Illinois-specific manual is available and approved for use, the current approved federal manual for identifying and delineating wetlands shall be used as the basis for determining wetlands subject to the Act. Wetlands shall be categorized according to the types listed in Appendix B. Additional regulatory guidance issued by the Corps of Engineers for the federal wetlands manual (e.g., concerning the treatment of farmed wetlands) also will be followed, as applicable. The most recent version of the "National List of Plant Species that Occur in Wetlands" published by the U S Fish and Wildlife Service will be used to determine hydrophytic vegetation. The most recent list of hydric soil map units maintained by each county Natural Resources Conservation Service Office will be used when locating areas of hydric soils.

The National Wetlands Inventory (NWI) maps and wetland maps that may be produced by local jurisdictions shall be used in determining the need to undertake field surveys to delineate and evaluate wetlands affected by IDOT or IDOT pass-through funded projects. Consideration also shall be given to the location of the project in the landscape and the proposed scope of work. Where wetlands are likely to occur and where such wetlands could be affected by the proposed project, field investigations shall be conducted to verify the presence of wetlands and to delineate any wetlands in the area the project may affect.

V. Policy on Wetlands Impacts and Compensation

Each Division of IDOT responsible for activities subject to the requirements of this Action Plan shall ensure that its policies and operating procedures reflect the following sequence of actions

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for addressing adverse wetlands impacts while giving due consideration to safety and appropriate design standards:

First priority: Avoidance of adverse wetland impacts.

Second priority: Minimization of adverse wetland impacts.

Third priority: Compensation for unavoidable adverse wetland impacts in accordance with the ratios in 17 Ill. Admin. Code 1090.50 c 8.

Wetland impacts of less than 0.3 acre resulting from IDOT or IDOT pass-through funded projects will be compensated for from a wetland compensation account site or other approved source of preexisting wetland credits (e.g., commercial wetland bank), or may be accumulated for compensation in a larger compensation site or sites. In either case, the compensation will be subject to the applicable ratios specified in 17 Ill. Admin. Code 1090.50 (c) (8). Opportunities to compensate for accumulated impacts will be pursued, as practical, when developing project-specific wetlands compensation for larger impacts, when new wetland compensation account/bank sites become available for use, or when establishment of a site or sites to offset accumulated impacts is determined appropriate as a stand-alone project.

Any accumulated acres of impact associated with IDOT or IDOT pass-through funded projects will be accounted for on the basis of the boundaries of the nine IDOT highway districts. IDOT will confer with IDNR at least once each year regarding the status of any accumulated impact balances in each of the IDOT highway districts and the status of compensation to offset the accumulated balances. The total of accumulated acres of impacts at any given time shall not exceed 5 acres in any IDOT highway district or 25 acres statewide. If accumulated balances approach either of these thresholds, IDOT will confer with IDNR to decide how compensation will be provided to reduce the accumulated balances.

Compensation for unavoidable adverse impacts of 0.3 acre or more, will be provided prior to or concurrent with the project action causing the wetland impact. In proposing such compensation for IDOT or IDOT pass-through funded projects, priority shall be given to locating the compensation close to the impacted wetlands to the extent practical. In evaluating the practicality of sites for potential use, the following will be considered:

- A. The site must be suitable for establishment of wetlands; i.e., contain hydric soils and be capable of providing suitable wetlands hydrology.
- B. IDOT, or the local agency responsible for an IDOT pass-through funded project, must be able to acquire the site for wetlands compensation purposes (i.e., for sites that are not adjacent to existing or proposed project right-of-way, either the site must have a willing seller or IDNR will provide written documentation confirming suitability of the site for use, in order to support condemnation action by IDOT, or local agency, in the case of an IDOT pass-through funded project).
- C. For sites that are not adjacent to existing or proposed project right-of-way, it must be possible for an agreement to be reached for transferring jurisdiction and responsibility for long-term management to the IDNR or another entity that meets the requirements of 17 Ill. Admin. Code 1090.90. (IDOT or a local highway agency ordinarily will assume

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responsibility for long-term management of sites adjacent to existing or proposed highway rights-of-way.)

When adverse wetlands impacts occur, one-for-one replacement of new wetlands of comparable functional type and size will be provided through wetlands restoration or creation before acquisition or research alternatives are considered. Buffer areas may be included for compensation credit when such areas are important to the protection of the compensation wetlands and the maintenance of their functions. The amount of credit allowed for buffer areas will be determined in consultation with IDNR on a case-by-case basis.

If a wetland compensation plan that meets the objectives of the Act cannot be developed, or if unique opportunities exist to further the goals of the Act through other means, approval may be requested from IDNR for the following:

- Acquisition of high quality wetlands and associated buffer;
- Funding of needed relevant research; or
- Wetlands compensation that provides replacement of the same and different wetland types as the adversely impacted wetlands.

Consistent with the requirements of the Interagency Wetland Policy Act, IDOT Divisions shall consider opportunities for increasing the quantity and quality of the State's wetlands resources as a component of ongoing operations to augment the amounts of wetlands provided through compensatory mitigation. These opportunities will be pursued primarily through cooperative initiatives with the IDNR. Such opportunities will be assessed for practicality and implemented as funding and manpower resources allow.

In identifying and evaluating potential sites for IDOT wetlands compensation accounts or other project-specific wetlands compensation, IDOT will coordinate with IDNR to obtain information as appropriate on potential sites that would be suitable for establishment of wetlands and that would complement IDNR natural resource programs and property management objectives. IDOT will consider the information from IDNR along with information obtained from other sources in proposing sites for approval. As practical, IDOT will give priority to pursuing the sites that would complement IDNR programs and objectives in developing compensation for IDOT projects.

VI. Processing Procedures

Project coordination with IDNR for actions subject to this Action Plan will be in accordance with the "Natural Resource Review and Coordination Agreement Between IDNR and IDOT," as executed in January 1996, or as subsequently amended, and the procedures in this section.

When potential impacts are identified, alternatives for avoiding and minimizing adverse impacts will be analyzed, consistent with applicable design standards and safety considerations. When the analysis of alternatives determines that the project will involve unavoidable adverse wetland impacts, IDOT will coordinate wetlands issues with IDNR in accordance with the following:

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A. Programmatic Review Actions

For purposes of this Action Plan, Programmatic Review Actions are those which involve impacts to wetlands only in areas where construction is within existing rights-of-way or in new right-of-way which is contiguous to (i.e., does not separate from) the existing right-of-way and for which there is no practicable alternative which would avoid adverse wetlands impacts. Examples of project-types that could qualify as Programmatic Review Actions if they meet the preceding criteria include, but are not limited to, the following: adding through or auxiliary lanes to an existing highway, widening and resurfacing existing pavements, widening shoulders on an existing highway, realigning an existing intersection, reconstructing or replacing an existing bridge, constructing runarounds or temporary stream crossings, and installing scour countermeasures (e.g., flexible revetment, rigid revetment, or flow control structures) for existing bridges.

Adverse wetland impacts resulting from Programmatic Review Actions will be compensated in accordance with the "minimal alteration" ratios specified in 17 Ill. Admin. Code 1090.50 c 8 except when the affected wetlands involve any of the factors specified in that section as requiring application of a 5.5:1 ratio.

For projects which qualify as Programmatic Review Actions, project-specific coordination with IDNR for wetlands compliance generally will not be required. However, when the work involving wetlands will require coordination with the Corps of Engineers for approval of a wetlands compensation plan, IDOT will provide information describing the proposed compensation to IDNR. This submittal will allow appropriate IDNR staff the opportunity to review and comment on the proposed compensation prior to receiving the compensation plan information as a part of the permit information from the Corps. In addition, IDOT will provide IDNR periodic lists of all projects that qualified as Programmatic Review Actions and were not coordinated with IDNR. The lists will be provided quarterly during the first year of operation under this Wetlands Action Plan, semiannually during the second year of operation, and annually thereafter. The lists will include the following information for each Programmatic Review Action:

- Project name/number
- Project type and location
- NWI classification code for each wetland affected
- Approximate size of the wetlands area(s) to be adversely affected by the project
- Description of compensation
- Current status and anticipated year of construction

IDOT will maintain complete files on all actions processed under this programmatic procedure. These files will be made available for audit by IDNR upon request.

For each Programmatic Review Action in which compensation will be provided through wetlands restoration or creation on a project-specific basis, IDOT will provide periodic monitoring reports in accordance with Section X of this Plan. IDOT also will notify IDNR at the end of the wetland compensation monitoring period to advise that the compensation work has been completed and to report on its success.

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B. Standard Review Actions

For purposes of this Plan, Standard Review Actions are projects which involve unavoidable adverse wetlands impacts and which do not qualify as Programmatic Review Actions. Consultation with IDNR regarding wetlands shall occur on a project-by-project basis for Standard Review Actions. As the initial step in the wetlands coordination process for Standard Review Actions, IDOT will submit a Wetland Impact Evaluation to IDNR. This evaluation will be submitted after the analysis of avoidance and minimization alternatives has been completed and the anticipated location and extent of any unavoidable adverse wetlands impacts has been determined. The Wetland Impact Evaluation will include the following:

- Information identifying the wetland site(s) affected and the relationship to the proposed action (including wetland delineation report(s), forms, and map(s), and NWI map(s) for the project area);
- Information describing the proposed work affecting each individual wetland (e.g., placement of fill, excavation, draining, removal of vegetation) in sufficient detail to allow a thorough review of the potential adverse wetlands impacts;
- Anticipated starting and ending dates for the project, if known;
- Indication of the total acreage expected to be converted from wetland habitat to other use(s); and
- Description of alternatives considered and an explanation of why there are no practicable alternatives to the proposed action.

Within 30 days of receipt of the Wetlands Impact Evaluation, IDNR will advise IDOT of any deficiencies in the information provided. IDNR will notify IDOT in writing of the date the Wetlands Impact Evaluation is deemed filed. Unless extended by written agreement between IDOT and IDNR, IDNR will complete its review of the Wetland Impact Evaluation within 60 days of the date it is deemed filed and will respond in accordance with 17 Ill. Adm. Code 1090.50 (a)(2). IDOT may request a reevaluation of IDNR's response in accordance with 17 Ill. Adm. Code 1090.50 (a)(2)(D). IDNR's final response to the Wetland Impact Evaluation will be valid for 3 years and shall be extended by IDNR upon demonstration that the project is being pursued in good faith and the conditions of the site have remained substantially unchanged.

For unavoidable adverse wetlands impacts resulting from Standard Review Actions, a project-specific wetland compensation plan will be prepared for approval by IDNR. When the necessary compensation is proposed from a wetland compensation account or other approved source of preexisting compensation credits, the compensation plan will provide information in accordance with Section VII A, below. For all other Standard Review Actions, IDNR will be provided a project-specific conceptual plan (see Section VII B) for concurrence and a wetland compensation plan (see Section VII C) for approval. IDOT will expect that the response from IDNR to the conceptual plan will indicate whether compensation sites proposed are acceptable, and whether

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IDNR has any other suitable sites available on which the necessary compensation would be feasible.

Unless IDOT and IDNR mutually agree to a longer time period, IDNR will respond to compensation plan submittals within 45 days of receipt. IDOT will accomplish follow-up coordination with IDNR as necessary to respond to comments from IDNR regarding the compensation proposal.

Proposals for use of wetland research funds to provide any part of the required compensation will be developed in consultation and coordination with IDNR and the Interagency Wetland Committee. Review and processing times described above will not be operative when compensation plans propose use of research funding for compensation. In these cases, IDNR will notify IDOT within 30 days of receipt of the compensation plan as to when the Committee will be convened to review the proposal for use of research funds. The review by the Committee should occur at the next regularly-scheduled Committee meeting or within 60 days of receipt of the plan by IDNR, whichever occurs first.

For Standard Review Actions, construction that would adversely affect wetlands will not commence until consultation with IDNR has occurred and IDNR has either approved the wetland compensation plan for unavoidable adverse wetland impacts or agreed that the impacts may be accumulated for after-the-fact compensation.

As provided in 17 Ill. Adm. Code 1090.50 (5), IDNR approval of a compensation plan is valid for three years. For projects involving a conceptual plan and a wetland compensation plan, the three-year time frame will begin upon approval of the wetland compensation plan. If IDOT does not commence implementation of a wetland compensation plan within the three year time frame, IDOT will re-coordinate with IDNR to renew the approval prior to proceeding with implementation of the compensation plan. IDOT will determine whether any changes have occurred at the proposed compensation site which would require revision of the compensation plan and will advise IDNR. If such changes have occurred, the plan will be revised as necessary to respond to those changes.

For Standard Review Actions, status reports will be provided to IDNR on implementation of wetland compensation plans involving wetlands restoration or creation, in accordance with 17 Ill. Adm. Code 1090.50 (6). These reports will include the following:

- A post-construction site evaluation report which will be submitted within 90 days after completion of any construction, seeding, planting, etc. necessary for establishing the replacement wetlands;
- Up to 4 annual reports on the status of the replacement wetlands and any associated buffer; and
- A final report on the status of the replacement wetlands and any associated buffer which will be submitted 5 years after the post-construction evaluation report.

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VII. Content of Wetland Compensation Plans

A. Plans for Use of Approved Preexisting Compensation Credits

When all of the necessary wetland compensation for a project is proposed from an approved wetland compensation account or other approved source of preexisting wetland credits, the following information will be provided in the wetland compensation plan:

- Project name/number, location, and description
- Name and address of the office responsible for the project
- Indication of type(s) (per Appendix B), amount(s), and locations of wetlands affected, including the drainage basin(s) and watercourses involved
- Description of alternatives which would avoid or minimize adverse impacts to the wetland and, as applicable, the reasons for their rejection
- Reasons for proposing use of an approved wetland compensation account or other source of preexisting wetland credits
- Description of the applicable compensation ratio(s), the amount and type (per Appendix B) of compensation credit to be provided, and the source of the credits, including location, current balances and any pending changes

B. Conceptual Plan

When all or a part of the necessary compensation will be provided through establishment of wetlands on a project-specific basis, a conceptual plan will be provided to outline the proposed compensation. The conceptual plan will present sufficient preliminary information to enable IDNR to concur in the proposed location and approach to providing compensation prior to proceeding with development of the details necessary for actually implementing the compensation.

The following is an outline of information that a conceptual compensation plan may include. The first two items will be provided in all cases. The remaining items will be addressed as necessary and appropriate to adequately describe the project's involvement with wetlands and the proposed compensation.

- Project name/number, location, and description
- Name and address for the office responsible for implementation of the wetland compensation plan
- Date of and summary statement of wetland surveys and the name, work address, and phone number of person(s) conducting surveys
- Indication of type(s) (per Appendix B) and amount(s) of wetland affected, including drainage basin(s) and watercourse(s) involved
- Description of alternatives considered which would avoid or minimize adverse impacts to the wetland and, as applicable, the reasons for their rejection
- Description of the precise location of the proposed wetland replacement site (including a map, legal description, and an indication of the distance from the wetland impact location(s) for which it provides compensation) and an indication of its current land use, biological, hydrological, and soils characteristics

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- Description of the proposed wetlands compensation, including a clear statement of goals, description of compensating wetlands to be created, restored, or acquired (including type(s) per Appendix B, and a conceptual plan drawing showing approximate layout, shape, etc.); compensation ratios to be applied; any research funding proposed in lieu of other compensation; and, if use of preexisting wetlands credits is proposed as a component of the compensation, the source of the credits, including current balances and pending changes
- General description of the work (e.g., grading, planting, importation of topsoil, alteration of hydrology) proposed to establish compensation site(s)
- Indication of the entity(ies) that will assume long-term responsibility for compensation sites to be established

C. Wetland Compensation Plan

A detailed wetlands compensation plan will provide the level of information necessary for implementing proposed compensation. The wetland compensation plan will include the information from the conceptual plan in addition to the items listed in 17 Ill. Adm. Code 1090.50 (c) (3), as necessary and appropriate for the specific compensation proposed.

VIII. Wetland Compensation Accounts

IDOT recognizes the benefits of consolidating compensation for numerous small impacts in larger sites. Such consolidation allows for economies of scale in planning, implementation, and maintenance of compensation and promotes the establishment of wetlands in advance of impacts that offer the potential for providing a broader range of functional benefits. IDOT also acknowledges the advantages such sites offer in terms of their potential for being located and sized to complement the plans and programs of resource agencies to make the sites more desirable for long term management and to provide enhanced environmental and social benefits for the people of Illinois. IDOT will actively pursue the development and use of wetland compensation account sites as practical for IDOT and IDOT pass-through funded projects, to maximize the benefits such sites provide. Establishment of wetland compensation accounts by IDOT or local agencies and project sponsors for use in complying with wetlands compensation requirements under the Act will be accomplished through formal agreement with IDNR. The unit of measurement for debits and credits will be established in the agreement for the compensation account. Use of credits from wetland compensation accounts will be subject to the compensation ratios in 17 Ill. Admin. Code 1090.50.

IX. Authority and Policies for Acquisition of Wetland Compensation Land

IDOT may acquire for highway purposes any property necessary for a highway project, or any other property for which a specific appropriation has been made. Mitigation property on-site or contiguous to a project will be described and discussed in appropriate project planning and design documents to adequately establish the necessity of acquisition. For other mitigation parcels, the need will be documented in wetland compensation account proposals or compensation plans submitted by IDOT and in written approval of such proposals and plans by IDNR.

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Lands for IDOT wetland compensation accounts will be acquired through whatever means IDOT determines appropriate, consistent with IDOT's statutory powers and authorities.

Local agencies and sponsors may use available eminent domain authority for compensation land within project rights-of-way and, when specifically allowed by law, for off-site compensation.

X. Monitoring

Monitoring and reporting procedures for wetland compensation areas will be addressed in accordance with the following:

- A. For IDOT or local agency wetlands compensation account (bank) sites, monitoring and reporting requirements will be specified in the interagency agreement with IDNR and other appropriate signatories authorizing establishment of the sites.
- B. For project-specific wetlands restoration or creation associated with Standard Review Actions or with Programmatic Review Actions that will require coordination with the Corps of Engineers for approval of the wetland compensation plan, monitoring and reporting procedures will be determined in consultation with the IDNR and the Corps of Engineers as a part of the Wetland Compensation Plan.
- C. For project-specific wetlands restoration or creation associated with Programmatic Review Actions that do not require coordination with the Corps of Engineers for approval of a wetlands compensation plan, monitoring procedures will be documented in the compensation plan on file for the project and will be based on the guidance in Chapter 5 of the "Illinois Wetland Restoration and Creation Guide" (Illinois Natural History Survey Special Publication 19, March 1997), and Chapter 8 of NCHRP Report 379 "Guidelines for the Development of Wetland Replacement Areas." The monitoring procedures will be commensurate with the size and complexity of the wetlands to be restored/created. For these actions, IDNR will be provided an annual report of the monitoring results for a period of up to 5 years, as necessary to verify wetlands success. This will be in addition to the information provided in the periodic summary reports on Programmatic Review Actions described in Section VI A.
- D. Monitoring will be carried out by or under the direction of IDOT except when that responsibility is delegated to a local agency or sponsor, subject to approval by IDNR of the monitoring plan of that local agency or sponsor.

XI. Transfer of Wetlands

Whenever IDOT can transfer management responsibility for wetland compensation areas without jeopardizing project operation, it will submit a written request to IDNR for approval of the transfer. IDOT will ask that IDNR respond to such requests within 60 days. IDOT will identify the proposed recipient of the land and will provide or outline the terms of the transfer agreement. IDOT generally will give preference to qualified entities which can ensure appropriate management without need for funding support from IDOT for assuming the management activities.

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In accordance with the requirements of the Act, and subject to obtaining any required approvals from the Governor or the State Legislature, IDOT will transfer compensation wetlands (other than those which are located within or that are otherwise an integral part of project rights-of-way) to IDNR or other eligible sponsors subject to formal transfer agreements that will fulfill all obligations of IDOT related to the approved compensation plan. In the event that IDOT is unable to find any other suitable entity to assume responsibility for long-term management of IDOT-developed wetland compensation sites, IDOT will transfer such sites to IDNR for long-term management. Such transfer shall not require a commitment from IDOT to provide funds to IDNR to support the management activities.

As long as wetland compensation property is held by IDOT, it will be maintained for its designated use. Where wetland compensation sites for IDOT pass-through funded projects are under the jurisdiction of a local agency, IDOT will require the local agency to ensure that the site will be maintained for wetlands purposes. Local agencies or sponsors may transfer wetlands or maintenance responsibilities to other public or private entities when allowed by law, subject to obtaining IDNR approval of such transfer.

If IDOT proposes the sale, exchange, or release of State-owned land containing wetlands to an entity other than another State agency, it will require the recipient of the land to grant a conservation easement which must contain provisions to protect the wetlands and any associated buffer areas from adverse impacts. Such easements will be written and recorded pursuant to the Real Property Conservation Rights Act. IDOT will attempt to have a unit of local government be the grantee of the easement. If a unit of local government cannot be obtained, IDOT will attempt to have an acceptable not-for-profit corporation or charitable trust be the grantee. If a unit of local government or not-for-profit entity cannot be obtained, IDOT will reserve conservation rights in its deed or release document and will transfer those rights to IDNR. Prior to the sale, exchange, or release of State-owned lands under IDOT control to an entity other than another State agency, the department will submit a written request to IDNR in accordance with 17 Ill. Adm. Code 1090.90 c 4.

XII. Compliance with Other Requirements

In implementing the provisions of this Action Plan, IDOT will ensure appropriate compliance with laws and regulations applicable to significant historic and archaeological sites and other resources requiring special consideration.

XIII. Conflict Resolution Procedures

Every effort will be made to cooperate with and coordinate wetland matters with IDNR. If circumstances arise in which a disagreement occurs over any substantive matter contained in this Action Plan or its application to IDOT actions or projects, the first attempt at resolution shall occur with technical managers in both Departments. If the matter cannot be resolved at this level within a reasonable period, it may be referred to higher management levels for resolution. The priority of the issues involved and the urgency of the need for resolution shall determine the time frames for referral to higher levels and how high within each organization the matter ultimately will be referred. If a conflict cannot be satisfactorily resolved between administrators in IDOT

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and IDNR, up to and including the Secretary of IDOT and Director of IDNR, the matter may be referred to the Governor's office for resolution.

XIV. Reports on Action Plan Implementation

Following approval of this Action Plan, IDOT will submit to IDNR a biennial report summarizing actions taken to implement the provisions of the Action Plan. The report will provide a listing of projects advanced through the wetlands compliance process and a tabulation of the amounts and types of associated mitigation accomplished. The report also will provide a description of other activities that resulted in the establishment of wetlands and a tabulation of the amount and type(s) of wetlands generated by those activities. The first biennial report will be submitted to IDNR on or before June 30 of the second year following initial approval of the Action Plan. Subsequent reports will be submitted on or before June 30 every other year thereafter.

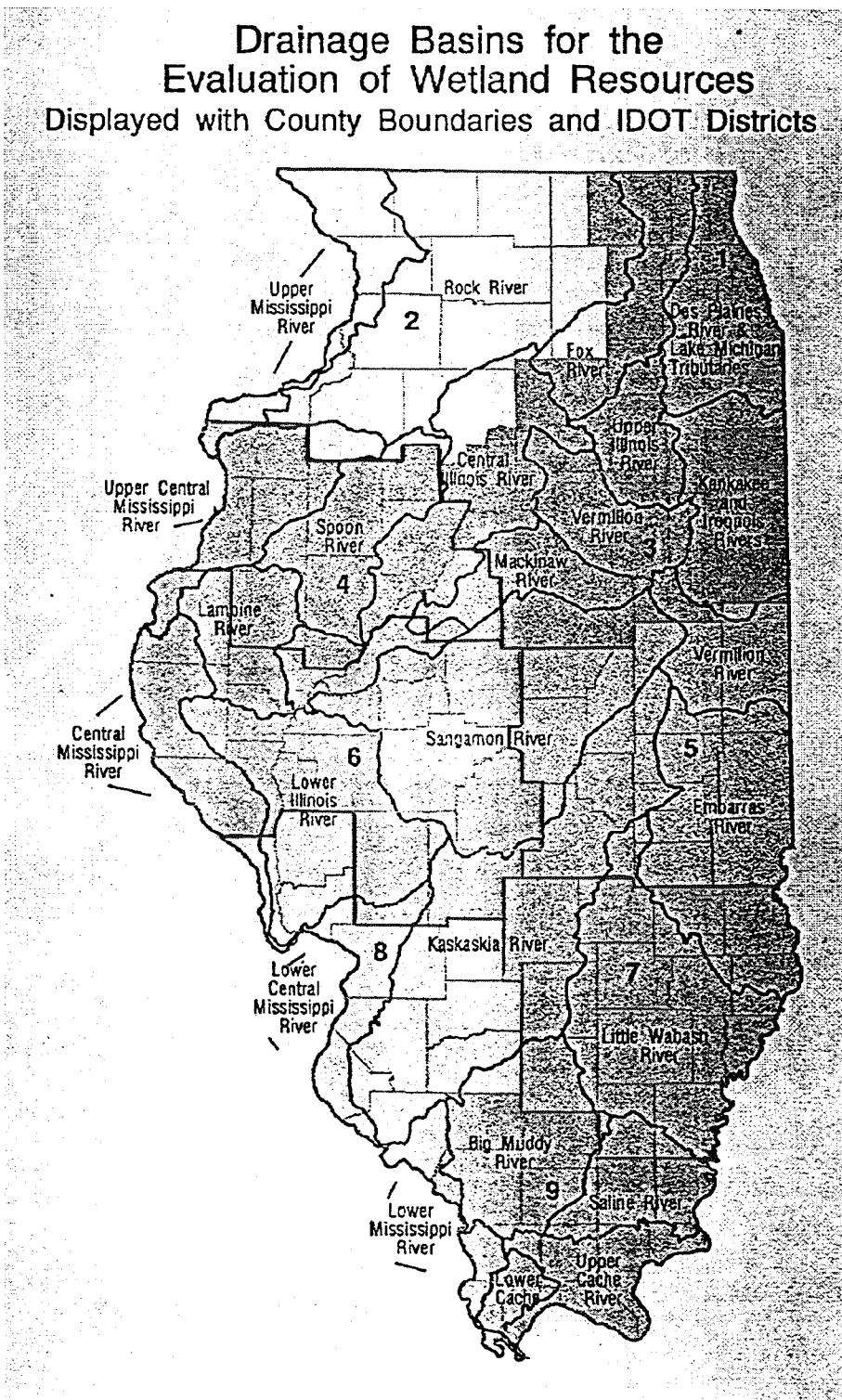
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Appendix A



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Appendix B

Wetlands Categories

Wetlands in Illinois can be classified into 12 categories as indicated below (refer to the accompanying category definitions), all of which are afforded protection under the Interagency Wetland Policy Act of 1989. For purposes of the IDOT wetland action plan, "disturbed" wetlands are treated as a separate category and the remaining categories are placed in three groups indicating their relative quality/complexity/rarity. (The order in which the wetland types are listed within each group does not indicate a relative ranking of the types within the group.) The groups are discussed in the following paragraphs and are intended primarily to guide project decision makers in planning wetlands compensation that will contribute to improving the quality of wetlands in Illinois.

□Group 1

Bog
Fen
Flatwoods

Wetland types represented by the Group 1 categories are the rarest types in Illinois. Because of the unique geological and topographic conditions essential to their existence, the potential for creating replacement wetlands of these types is extremely limited (in the case of fens) or nonexistent (in the case of bogs and flatwoods). The utmost effort shall be made to avoid any adverse impacts to wetlands in these categories.

□Group 2

Sedge Meadow
Prairie, wet
Swamp

Group 2 wetland types are high quality, relatively complex systems. They are somewhat limited in their occurrence in the State because of the special conditions on which their existence depends. Because of their complexity, they will be somewhat difficult to create or establish and will have to meet demanding site criteria in order to be sustainable. For unavoidable impacts to Group 2 wetlands, compensation shall be of the same type as the wetland affected, to the fullest extent possible.

□Group 3

Marsh
Wet meadow
Forested
Scrub-shrub
Open water

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Group 3 wetlands are the most prevalent in Illinois. These categories also can be more readily created or established in more areas of the State than can Group 1 or Group 2 wetlands.

□Disturbed wetlands

Disturbed wetlands include sites such as farmed wetlands, successional old fields, and urban disturbed areas which, because of their disturbed nature, do not readily fit any other wetlands category. For Disturbed wetlands, compensation for unavoidable adverse impacts will not be in-kind; it shall be either a Group 3 type or a Group 2 type.

Definitions of Wetland Categories

Bog

The bog communities of Illinois are found almost exclusively in glaciated depressions of the northeast corner of the state. Drainage is usually restricted, and this, coupled with an abundance of sphagnum moss, results in conditions which are highly acidic. The soils of a bog are saturated throughout the growing season in most years, and small open water areas are common. Vegetation consists of a variety of emergents with shrubs and/or small trees occurring on more consolidated peat. (At the beginning of 1994, there were 10 identified bogs in Illinois which comprised 232.8 acres.)

Definition adapted from A Field Guide to the Wetlands of Illinois, 1988)

Fen

A fen is a type of wet meadow fed by an alkaline water source such as a calcareous spring or seep. The deposition of calcium and magnesium in the soil results in an elevated soil pH and gives rise to a variety of unique plants adapted to surviving these conditions. The vegetation is normally comprised of herbaceous emergents although woody shrubs or even trees sometimes occur. (At the beginning of 1994, there were 20 identified fens in Illinois which comprised 153.1 acres.)

Definition adapted from A Field Guide to the Wetlands of Illinois, 1988.

Flatwoods

Flatwoods are woodlands growing on level surfaces, usually with widely spaced trees, with slowly permeable and poorly drained soils that contain an argillic horizon or claypan. (At the beginning of 1994, there were 24 identified flatwoods in Illinois which comprised 617.5 acres.)

Definition adapted from White, John, 1978. Illinois Natural Areas Inventory Technical Report, Volume 1 Survey Methods and Results.

Sedge Meadow

A sedge meadow is a wetland dominated by sedges (*Carex*) and occurring on peat, muck, or wet sand.

Definition adapted from White, John, 1978. Illinois Natural Areas Inventory Technical Report, Volume 1 Survey Methods and Results.

Prairie, wet

A wet prairie is a community dominated by graminoid vegetation on mineral soil which is almost always saturated.

Definition adapted from White, John, 1978. Illinois Natural Areas Inventory Technical Report, Volume 1 Survey Methods and Results.

Swamp

A swamp is a wetland characterized by the presence of permanent to semipermanent water and a greater than 30% areal canopy cover of tall (over 20 feet) woody vegetation. In many areas, the canopy cover exceeds 80%.

Definition adapted from A Field Guide to the Wetlands of Illinois, 1988.

Marsh

A marsh is a wetland in which tall graminoid plants dominate the plant communities. Marshes have water near or above the surface for most of the year. Soils may be peat, muck, or mineral.

Definition adapted from White, John, 1978. Illinois Natural Areas Inventory Technical Report, Volume 1 Survey Methods and Results.

Wet meadow

A wet meadow is a wetland characterized by moist to saturated soils with standing water present for only brief to moderate periods during the growing season. Vegetation includes a wide variety of herbaceous species, from sedges and rushes to forbs and grasses. Woody vegetation, if present, accounts for less than 30% of the total areal cover.

Definition adapted from A Field Guide to the Wetlands of Illinois, 1988.

Forested

Forested wetlands differ from true swamps in that they lack continuously standing water, although repeated flooding is

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common. Differences in the length of inundation give rise to a variety of community types within this classification. Definition adapted from A Field Guide to the Wetlands of Illinois, 1988.

Scrub-shrub

A scrub-shrub wetland typifies a community in transition and exemplifies the dynamic nature of wetlands in general. Many emergent wetlands left undisturbed, will gradually be replaced through succession by woody vegetation that will in time develop into a mature forest. The scrub-shrub wetland is often found grading shoreward from an emergent wetland which borders a lake, stream, or pond. The woody vegetation accounts for at least 30% of the vegetation present, and must be less than 20 feet (6 meters) tall. Species composition is dependent on the length of inundation, with willows and dogwood growing in the temporarily to seasonally wet areas and buttonbush in semipermanently flooded areas.

Definition adapted from A Field Guide to the Wetlands of Illinois, 1988.

Open water wetlands

Small and shallow [area < 20 acres (8.1 ha) and depth < 6.6 ft. (2 m)] open water areas that lack emergent woody or graminoid vegetation. Natural ponds, farm ponds, borrow pits, and open water areas that occur within a marsh or swamp are included in this category. (Lacustrine and riverine systems are not included in this category.)

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NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Implementing Procedures for the Interagency Wetlands Policy Act
- 2) Code Citation: 17 Ill. Adm. Code 1090
- 3) Section Numbers:
- | | |
|----------|---------------------------------------|
| 1090.10 | <u>Adopted Action:</u>
New Section |
| 1090.20 | New Section |
| 1090.30 | New Section |
| 1090.40 | New Section |
| 1090.50 | New Section |
| 1090.60 | New Section |
| 1090.70 | New Section |
| 1090.80 | New Section |
| 1090.90 | New Section |
| 1090.100 | New Section |
- 4) Statutory Authority: Implementing and authorized by the Interagency Wetland Policy Act of 1989 [20 ILCS 830].
- 5) Effective Date of Rulemaking: May 6, 1996
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) Date filed in Agency's Principal Office: May 6, 1996
- 9) Notice of Proposal Published in Illinois Register: October 31, 1995, 19 Ill. Reg. 14238
- 10) Has JCAR issued a Statement of Objections to these rules? No
- 11) Difference(s) between proposal and final version: The following changes were made in section 1090.10:

Added the following definition: "Act" - The Interagency Wetland Policy Act of 1989 [20 ILCS 830].

In the definition for "Agricultural Activity" the following changes were made: "Means" was changed to "Includes"; a comma was added between "to" and "normal"; the comma following "including" was removed.

"Converted Wetland" -- "either" was removed.

"Destruction" -- "two (2)" was replaced with "2" and "twelve (12)"

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was replaced with "12" and a comma was placed between "to" and "the".

"Listed Species" -- removed are, capitalized "those".

"Minimal alteration" -- "twelve" was replaced with "12".

"Normal Circumstances" -- comma added following "wetland".

"Off the site" -- removed "(1)".

"On the Site" -- removed "(1)".

"Significant Alteration" -- replace "two (2)" with "2" and "twelve"

with "12" in two places.

"State Jurisdictional Wetland" -- replace "three" with "3".

"Wetland Compensation" -- capitalize "c" in Compensation; delete "Means either;" combine 3 paragraphs into 1; and place "providing" in lower-case.

"Wetland Compensation Account" -- Capitalize definition, delete "Means", capitalize "a", add semi-colon following "compensation".

delete "and".

In Section 1090.20, introductory paragraph, delete "Actions Requiring Review --", add comma following "by", replace "in that" with "for which", add comma following "by" and delete "and the provisions of these rules".

In Section 1090.20(e), delete quotes, and ", as permitted by provisions of this Act".

In Section 1090.20(f), capitalize "State".

In Section 1090.30(a), replace "production" with "activity" and "Rule" with "Part" and capitalize "State".

In Section 1090.30(b), insert "in-kind replacement," following "repair" and insert "culverts, storm sewers, field tiles, retaining walls and appurtenant structures," following "approaches".

In Section 1090.20(d), "where" was replaced with "if" and "Rule" with "Part".

In Section 1090.30(d)(1), the comma following "applicator" was removed.

In Section 1090.30(e), subsections (e) through (m) were amended/added as follows:

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- e) Following actions which take place within existing maintained rights-of-way including the installation and maintenance of signs, lighting and fences and the mowing of vegetation. Provided such actions do not jeopardize the existence of a threatened or endangered species, Illinois Natural Inventory Site or the essential habitat of a threatened or endangered species;
- f) Routine resurfacing, rehabilitative maintenance or application of oil and gravel to existing roads and highways that does not increase the number of traffic lanes, provided that such activities do not adversely impact a wetland;
- g) Repair and maintenance of existing buildings, facilities, lawns, and ornamental plantings;
- h) Issuance of permits and licenses;
- i) A change in land use from agriculture to wetland habitat, consistent with this Part;
- j) Fisheries management activities in lakes, ponds, reservoirs, rivers, and streams that are for the management and enhancement of the aquatic resource where such practices took place prior to the effective date of this Part;
- k) Construction projects which were let for bidding prior to the effective date of this Part;
- l) Application of media (including deicing) on the surface of existing roads for purposes of public safety; and
- m) Non-surface disturbing surveys and investigations for construction, planning, maintenance or location of environmental resources.
- In Section 1090.40(a), the apostrophe in "AAP's" was removed.
- In Section 1090.40(c), "Government" was placed in lower case.
- In Section 1090.40(d) and (d)(1), "four (4)" was changed to "4".
- In Section 1090.40(e), "of this Part" was added at the end of the subsection.
- In Section 1090.50, introductory paragraph, "(MOA)" was added following "Agreement" and "of this Part" was added following "1090.40."
- In Section 1090.50(a)(1)(B), (C), and (D), "state" was capitalized.

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- In Section 1090.50(a)(1)(D), the following was added at the end of the subsection: "Sufficient detail is not intended to include final design level drawings or calculations".
- In Section 1090.50(a)(2), all numbers were changed to figures and the parentheses removed and "of" following "days" was changed to "after" in two places.
- In Section 1090.50(a)(2)(A), (B) and (C), "state" was capitalized.
- In Section 1090.50(a)(2)(D) and section 1090.50(a)(3), all numbers were changed to figures and the parentheses removed.
- In Section 1090.50(c), "to a state" was changed to "on a State".
- In Section 1090.50(c)(C), the "s" in "wetlands" was removed.
- In Section 1090.50(c)(3)(H), the "and" was removed.
- In Section 1090.50(c)(3), the label "J" was removed and text indented to the third level of indentation.
- In Section 1090.50(c)(4), the "two" was replaced with "2" and "of receipt" was changed to "after receipt".
- In Section 1090.50(c)(5), "three (3)" was changed to "3".
- In Section 1090.50(c)(6)(B), "four" was changed to "4".
- In Section 1090.50(c)(6)(C), "five (5)" was changed to "5".
- In Section 1090.50(c)(8), the title of the table was changed to reflect "Location of the Replacement Wetland".
- The language following the table was indented to the next level of Indentation and in the fourth subsection, "either" was removed.
- In subsection 1090.50(c)(8)(B), "state" was capitalized, a period was added following "species" and the semi-colon was changed to a period.
- In Section 1090.50(c)(8)(C), a comma was added following "1978", the period following "Report" was changed to a comma, and "pp 426;" was changed to read "p 426."
- In Section 1090.50(c)(8)(E), "Section 1090.50 c 8) A through D occur" was changed to read "subsection (c)(8)(A) through (D) of this Section occur".
- In Section 1090.50(c)(8)(F), the comma following "ratio" was removed,

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"Area" was changed to "area", "ILCS 830 Section/1-2" was changed to read "ILCS 830/1-2". "Or this Part" was added following "Section 1090.80", the comma following "type" was changed to a period and "these" was capitalized.

In Section 1090.50(c)(8)(H), "make" was changed to "have".

In Section 1090.50(c)(a), the second sentence was changed to read, in part, "If either the alternative in subsection (9)(A) or (B) is approved. . ."

In Section 1090.50(3)(2), "subsection" was changed to "subsections", "1090.50" was removed, "of this Section" was added following "(2)", "provision" was changed to "subsection", "Section 1090.50 c)8)" was changed to read "subsection (c)(8) of this Section."

In Section 1090.60(a)(2), "and" was removed.

In Section 1090.70(b)(2), "subsection 1090.50(c)(8)" was changed to read "Section 1090.50(c)(8) of this Part."

In Section 1090.70(c), "three" was changed to "3".

In Section 1090.70(c)(2), "and" was changed to "or".

In Section 1090.70(d), "thirty percent (30)" was changed to "30%".

In Section 1090.70(u), "fifty percent" was changed to read "50%".

In Section 1090.80, commas were added following "Department" and "develop", following ". . . implementation of this Part" the following was added: "Both the Department and the Committee will receive and consider public comment on proposed technical procedures and the Department will attempt to notify associations whose members will be expected to utilize any new technical procedures."

In Section 1090.80(a) and (b), "manual" was changed to "procedures".

In the title of Section 1090.90, the period was removed and "Compensation Areas" was added.

In Section 1090.90(b), "be based upon but not limited" was replaced with "include but is not limited".

In Section 1090.90(c), "state" was capitalized.

In Section 1090.90(c)(1), "765 ILCS 120" was replaced with "765 ILCS 120/4".

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In Section 1090.90(c)(4), "sixty (60) days of receiving" was replaced with "60 days after receiving".

In Section 1090.100, "Rule" was changed to "Part".

1.2) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

1.3) Will this rulemaking replace an emergency rule currently in effect? No

1.4) Are there any amendments pending on this Part? No

1.5) Summary and Purpose of Rulemaking: This Part creates a review process for activities which affect wetlands, sets parameters for Agency Action Plans and Memorandums of Agreement, and sets wetland compensation schedules.

1.6) Information and questions regarding these adopted amendments shall be directed to:

Jack Price
Department of Natural Resources
524 S. Second Street, Room 430
Springfield, IL 62701-1787
217/782-1809

The full text of the Adopted Rules begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED RULES

TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER C: ENDANGERED SPECIES

PART 1090
IMPLEMENTATION PROCEDURES FOR THE
INTERAGENCY WETLANDS POLICY ACT

Section Definitions
1090.10 Actions Requiring Review
1090.20 Actions Exempted
1090.30 Agency Action Plans and Memorandums of Agreement
1090.40 Wetland Review Process
1090.50 Analysis of Alternatives
1090.60 Technical Procedures
1090.70 Transfer and Management of Wetland Compensation Areas
1090.80 Appeals
1090.90 Drainage Basins for the Evaluation of Wetland Resources
Exhibit A

AUTHORITY: Implementing and authorized by the Interagency Wetland Policy Act of 1989 [20 ILCS 830].

SOURCE: Adopted at 20 Ill. Reg. 6693, effective MAY 6, 1991.

Section 1090.10 Definitions

The following terms will be used throughout this Part:

"Act" - The Interagency Wetland Policy Act of 1989 [20 ILCS 830].

"Agricultural Activity" - Includes, but is not limited to, normal farming, ranching, horticulture, silviculture, grazing, haying, production of tree fruits or nuts, raising of livestock, production of row crops, and other farming activities including but not limited to tillage, seeding, irrigation, spraying, cultivating, and harvesting for the production of food and fiber products.

"Compensation Ratios" - Relationship between the amount of compensation required as compared with the amount of adverse impact to a wetland.

"Best Technology Currently Available" - The term includes, but is not limited to, devices, systems, methods, techniques, construction practices, siting requirements, vegetative selection, planting requirements, scheduling of activities and design of structures that

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are currently available.

"Buffer Area" - A portion of the supportive upland or related essential environmental area adjacent to a wetland that serves as an integral component of the wetland ecosystem and helps to protect the wetland's functional values.

"Converted Wetland" - The alteration of wetland hydrology, plants or soil such that the area no longer meets the definition of a wetland.

"Department" - The Department of Natural Resources.

"Destruction" - An adverse wetland impact that does not meet the criteria to be defined as a programmatic action and that causes either:

The removal or loss of 2 or more acres of wetland vegetation; or

The alteration of preexisting hydrology or soils of more than 0.5 acres of a wetland for more than 12 months. This includes, but is not limited to, the placement of dredge or fill material into a wetland, the drainage of a wetland, filling in of a wetland through sedimentation, etc.

"Essential Habitat" - As defined in 17 Ill. Adm. Code 1075 - Consultation Procedures for Assessing Impacts of Agency Action on Endangered and Threatened Species and Natural Areas, the physical and biological environment that is required to maintain viable populations of a listed species in order to ensure the survival and recovery of that species.

"Fisheries Management Activities" - Activities that preserve, restore, maintain, control or enhance aquatic resources. This includes biological, chemical, mechanical, or physical management of aquatic life and their habitats.

"Forestry Activity" - Planting, cultivating, thinning, harvesting, or any other silvicultural activity undertaken to use forest resources or to improve their quality or productivity. This does not include the clearing of trees to convert forest to another land use.

"Hydrologic Unit" - The drainage area of a river or stream as identified in Exhibit A.

"Level of Impact" - Refers to amount of adverse impact a project will have on a wetland and is expressed in terms of minimal alteration, significant alteration or wetland destruction.

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"Listed Species" - Those species declared threatened or endangered by the Illinois Endangered Species Protection Board.

"Minimal Alteration" - An adverse wetland impact that:

Meets the criteria to be defined as a programmatic action; or

Causes the removal or loss of 0.5 acre or less of wetland vegetation but that does not alter the preexisting hydrology of the wetland for a period of more than 12 months.

"Normal Circumstances" - Determined on the basis of an area's characteristics and use, at present and in the recent past. If an area is abandoned and over time regains wetland characteristics such that it meets the definition of wetland, then jurisdiction has been restored.

"Off the Site" - A wetland compensation area located within the same Hydrologic Unit boundary (as identified in Exhibit A), but more than one mile, from the site of the proposed project for which the wetland compensation is required.

"On the Site" - When a wetland compensation area is located within the same Hydrologic Unit boundary (as identified in Exhibit A) and within one mile of the site of the proposed project for which the wetland compensation is required.

"Out of the Drainage Basin" - When a wetland compensation area is located outside the hydrologic unit boundary (as identified in Exhibit A) which includes the site of the proposed project for which the wetland compensation is required.

"Performance Standards" - Predetermined goals for achieving and measuring the success of a wetland compensation project.

"Programmatic Actions" - Actions defined in an agency Action Plan that will result in the establishment of coordination procedures between the agency and Department that will reduce the amount of time, correspondence and documentation required to fulfill an agency's obligations under this part.

"Progressive Levels of Compensation" - Refers to a system which requires increasing levels of compensation based upon the level of adverse impact to an affected wetland and the location of a compensation wetland in relationship to the adversely impacted wetland.

"Significant Alteration" - An adverse wetland impact that does not

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meet the criteria to be defined as a programmatic action and that causes either:

The removal or loss of more than 0.5 acre but less than 2 acres of wetland vegetation but that does not alter the preexisting hydrology of the wetland for a period of more than 12 months; or

The alteration of preexisting hydrology or soils of 0.5 acre or less of a wetland for more than 12 months. This includes, but is not limited to the placement of dredge or fill material into a wetland, the drainage of a wetland, filling in of a wetland through sedimentation, etc.

"State Jurisdictional Wetland" - Land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions. Areas that are restored or created as the result of mitigation or planned construction projects and that function as a wetland are included within this definition even when all 3 wetland parameters are not present.

"Value" - Unit of measure (i.e., acres, wetland functions, or dollars) that is multiplied by the appropriate wetland compensation ratio to determine the amount of wetland compensation that is required.

"Wetland Compensation" - The required planning and implementation process that results in the replacement of wetland function and area to offset an adverse wetland impact; or providing funding for wetland research, acquisition, etc.

"Wetland Compensation Account" - A system of accounting for wetland loss and compensation; can include one or more account sites.

"Wetland Creation" - The establishment of a wetland where a wetland does not currently exist.

"Wetland Enhancement" - Wetland management or other activity that increases one or more natural or artificial wetland functions while minimizing adverse impacts to other wetland functions.

"Wetland Management Practices" - Activities that maintain, control and enhance wetland wildlife habitat. This includes the chemical and/or mechanical control of undesirable vegetation.

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- Any construction, land management or other activity performed by, or for which financial assistance is administered or provided by, a State agency that will result in an adverse impact to a wetland shall be subject to compliance with this Part. This includes but is not limited to the following:
- The alteration, removal, excavation, or dredging of soil, sand, gravel, minerals, organic matter, vegetation, or naturally occurring materials of any kind from a wetland;
 - The discharge or deposit of fill material or dredged material into a wetland;
 - The alteration of existing drainage characteristics, sedimentation patterns, or flood retention characteristics of a wetland;
 - The disturbance of the water level or water table of a wetland;
 - The destruction or removal of plant life that would alter the character of a wetland, except for activities undertaken in accordance with the Illinois Noxious Weed Act;
 - The transfer of State owned wetlands to any entity other than another State agency; and
 - Other actions that cause or may cause adverse wetland impacts.

Section 1090.30 Actions Exempted

Any construction, land management, or other activity funded or performed by a State agency that will not result in an adverse impact to a wetland and the following actions are exempt from this Part:

- Established and continuous agricultural and forestry production activities, including the distribution of water for agricultural activity, as defined, maintenance and operation of existing residences and facilities; upland soil and water conservation practices, causeways, bridges, or water control structures; provided that these activities do not adversely impact wetlands on which agricultural and forestry activities were not conducted prior to the effective date of this Part. Activities on areas lying fallow as part of a conventional rotational cycle or as the result of participation in a State or federal farm program are part of an established and continuous hydrological regime are necessary to resume operation, maintenance, or operation. Activities that bring an area into farming or ranching use are not part of an established and continuous operation. An operation ceases to be established and continuous when the area in which the agricultural or forestry activity was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation;
- Activities involving the repair, in-kind replacement, maintenance, or emergency reconstruction of recently damaged portions of currently serviceable structures including dikes, dams, levees, groins, riprap, breakwaters, bridge abutments, piers, appurtenances or approaches, culverts, storm sewers, field tiles, retaining walls and appurtenant structures, water control structures, and transportation structures provided that such activities do not adversely impact or cause the conversion of a wetland. Maintenance does not include any

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modification that changes the character, scope, or size of the original fill design;

- Activities undertaken for the maintenance of existing ponds, stormwater detention basins and channels, drainage ditches or navigation channels;
- Wetland management practices on lands that are used primarily for the management of waterfowl, other migratory water birds or turtles if such practices took place on these lands prior to the effective date of this Part.

- This includes vegetation management which may include the use of fire, chemical and/or mechanical (hydro-axe, bulldozer, cone disk, or similar equipment) removal of invading woody and/or herbaceous vegetation to maintain a preferred succulent sedge stage, use of chemicals will be by a certified applicator and chemicals will be registered for appropriate use.
- Clearing or removal of woody vegetation will be limited to 4-inch dbh or smaller material for the purpose of establishing and/or maintaining the successional stage of a wetland as a herbaceous wetland vegetated by native moist soil plants and/or selected wildlife food plants.
- The following actions which take place within existing maintained rights-of-way including the installation and maintenance of signs, lighting and fences and the mowing of vegetation. Provided such actions do not jeopardize the existence of a threatened or endangered species, Illinois Natural Inventory Site or the essential habitat of a threatened or endangered species;
- Routine resurfacing, rehabilitation maintenance or application of oil and gravel to existing roads and highways that does not increase the number of traffic lanes. Provided that such activities do not adversely impact a wetland;
- Repair and maintenance of existing buildings, facilities, lawns, and ornamental plantings;
- Issuance of permits and licenses;
- A change in land use from agriculture to wetland habitat, consistent with this Part;
- Fisheries management activities in lakes, ponds, reservoirs, rivers, and streams that are for the management and enhancement of the aquatic resource where such practices took place prior to the effective date of this Part;
- Construction projects which were let for bidding prior to the effective date of this Part;
- Application of media (including delcicing) on the surface of existing roads for purposes of public safety; and
- Non-surface disturbing surveys and investigations for construction, planning, maintenance or location of environmental resources.

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- a) State agencies represented on the Interagency Wetlands Committee shall comply through the development and implementation of their Agency Action Plan (AAPs).
- b) State agencies who are not members of the Interagency Wetlands Committee may comply with the Act by:
 - 1) Development of a Memorandum of Agreement with the Department that is consistent with the minimum provisions required for Agency Action Plans; or
 - 2) Development of an Agency Action Plan.
 - c) The State agency or unit of State government that funds, administers pass-through funding, provides or supports any construction, land management, land acquisition, land transfer or other activity that will result in an adverse impact to wetland shall be responsible to ensure that the unit receiving the assistance complies with the provisions of this Part. The State agency or unit of State government providing assistance may require the agency or applicant receiving assistance to furnish all information and perform all compliance tasks as defined in this Part.
 - d) Agency Action Plans and Memorandums of Agreement shall be valid for a period of 4 years. During that period, the agency shall submit a biennial report to the Department on or before June 30 describing actions taken to implement the AAP or Memorandum of Agreement. Renewal of the Agency Action Plan shall be initiated by a letter from the Department to the agency. The agency may request that an Agency Action Plan be renewed with no modifications or with modifications.
 - 1) If no modifications are requested or required, the Agency Action Plan or Memorandum of Agreement shall be automatically renewed for 4 years by the Department, provided that biennial reports are timely and complete and that the Agency has not had a change in legislative authority that would alter the terms of the AAP.
 - 2) If modifications are requested or required the agency and Department shall initiate discussions to modify the Agency Action Plan or Memorandum of Agreement and it shall follow the same review and approval process as provided in the Act.
 - e) All Agency Action Plans shall include provisions indicating that the agency shall use or require the use of technical procedures adopted in accordance with Section 1090.80 of this Part.

Section 1090.50 Wetland Review Process

Action that require coordination under this Part shall not be commenced until completion of the wetland review process and a wetland compensation plan has been approved for any unavoidable adverse wetlands impacts. Coordination with the Department shall be accomplished through the wetland review process as defined in this section or as provided in Agency Action Plans or Memorandums of Agreement (MOA) approved in accordance with Section 1090.40 of this Part. The wetland review process shall consist of the following:

- a) Wetland Impact Determination

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- 1) When an action covered by this Part is proposed, the agency initiating or supporting the action shall cause to have completed and submitted a Wetland Action Report to the Department. This Report shall be submitted as early in the planning process as practicable. The purpose of this report is to identify the specific location of a proposed project in order to determine if a wetland is likely to be adversely impacted by the proposed action. The Wetland Action Report shall include but not be limited to the following:
 - A) Name and address of the agency proposing the action;
 - B) Sufficient detail (field report, surveys, site inventories, maps and/or photographs) to determine the presence or absence of a State jurisdictional wetland;
 - C) The precise location of the proposed action sufficient to show the relationship of the State jurisdictional wetland to the proposed action;
 - D) An accurate description of the proposed action in sufficient detail to allow a thorough review of the potential impact to a State jurisdictional wetland. This may include a site plan, soil erosion control plan, an assessment of the benefits to the wetland, or similar information. Sufficient detail is not intended to include final design level drawings or calculations;
 - E) Anticipated starting and ending dates of the proposed action (e.g., land clearing, project construction, etc.); and
 - F) Discussion of alternative actions considered and supporting justification of the selected alternative if that alternative will or is likely to have an adverse wetland impact.
- 2) Unless otherwise stated in the AAP or MOA, the Department shall, within 30 days after the receipt of a wetland action report inform the applicant in writing of any deficiencies in the report or of further information the Department needs in order to evaluate the report. In the event no such request is made by the Department, the report shall be deemed filed on the expiration of the thirtieth day. The Department shall notify the agency in writing of the date the report is deemed filed. Unless otherwise stated in the AAP or MOA, from the date the report is deemed filed, the Department shall have 60 days to complete its review between the applicant and Department. Unless otherwise stated in the AAP or MOA, the Department shall provide one of 3 responses to the agency or applicant proposing the action within 60 days after receipt of a wetland action report which is deemed filed:
 - A) If no adverse impacts to a State jurisdictional wetland will or are likely to occur, a letter shall be sent indicating that further coordination with the Department is not necessary and that the proposed action may be carried out as necessary.

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- B) If an adverse impact to a State jurisdictional wetland is likely to or will occur, and practical alternatives to the proposed action do not exist, a letter shall be sent approving the proposed action with restrictions or limitations as the Department concludes are necessary in order to meet the purpose of the Act.
- C) If an adverse impact to a State jurisdictional wetland is likely to or will occur, and practical alternatives to the proposed action exist, a letter shall be sent indicating that the proposed action shall not be carried out as planned.
- D) The agency or applicant may request a reevaluation of the Department's response to a Wetland Action Report. The Department shall have 30 days to complete a reevaluation. The 30 day period can be extended by a written agreement between the agency or applicant and Department.
- E) A wetland impact determination is valid for a period of 3 years following the issuance of a written notice to the agency or applicant submitting the request. The Department shall grant an extension upon demonstration by the agency or applicant that the project is being pursued in good faith and that conditions of the site have remained substantially unchanged.
- F) Emergencies
- 1) Two types of emergency circumstances pose an immediate threat to human life, or severe loss of property is imminent from situations involving natural or man-made disasters, casualties, or national defense or security emergencies, and the action must be taken immediately, the agency can proceed without notifying the Department prior to taking action. A wetland action report shall be filed and a wetland impact determination shall be initiated as soon as practicable after the emergency is under control, but not to exceed 30 days. If necessary, this shall be followed by the development, approval, and implementation of a wetland compensation plan.
- Where emergency circumstances pose a threat to human life or severe loss of property and the action must commence within 30 days, the agency shall contact the Department prior to commencing the action and explain the nature of the problem. The wetland impact determination shall be initiated as soon as practicable after the emergency is under control, but not to exceed 30 day. If necessary, this shall be followed by the development, approval, and implementation of a wetland compensation plan.
- G) Wetland Compensation Plans
- 1) If the wetland impact determination establishes that the proposed action is likely to have an adverse impact on a State jurisdictional wetland, the agency or applicant is responsible

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- for the development and implementation of a wetland compensation plan. A wetland compensation plan shall be submitted either:
- A) Along with the request for a wetland impact determination;
- B) After the Department submits its formal written response to the wetland impact determination.
- 2) If the wetland compensation plan is submitted as part of the wetland impact determination it shall be used in the evaluation of that material. However, formal review and response to the wetland compensation plan shall not occur until after the Department and agency or applicant have resolved all issues related to the wetland impact determination.
- 3) The wetland compensation plan shall include but not be limited to the following:
- A) Name and address of the agency or applicant responsible for the development and implementation of the wetland compensation plan;
- B) Description of the proposed replacement project including a clear statement of goals;
- C) Identification of the wetland type which will be adversely impacted and the wetland type that is to be established;
- D) A description of the wetland that will be adversely impacted and an evaluation of the current land use, biological, hydrological, and soil characteristics of the site where the replacement wetland is to be established;
- E) The precise location of the wetland that is to be established including a map, legal description, and distance from the wetland that will be adversely impacted;
- F) Site plan that includes the plant materials and methods to establish those plant materials, proposed contours of the wetland and surrounding buffer to be established, sources of water, anticipated hydro-period(s) of the proposed wetland and any water control structures, the watershed draining into the proposed wetland, and relationship of the site to surrounding land uses;
- G) Operation, management and maintenance plan for the site future construction within the wetland compensation area, such as the use of buffer areas, restricting the site to surrounding land uses;
- H) The monitoring plan to evaluate the success and/or failure of the wetland establishment effort, including the use of measures to correct identified deficiencies or problems; and
- I) Anticipated starting and ending dates of the wetland compensation plan.
- If the applicant is unable to develop a wetland compensation plan, a request for consideration of other compensation alternatives may be made. The request for consideration of other

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compensation alternatives must be a written proposal detailing why a form of wetland compensation other than the establishment of a replacement wetland is being requested and specific details describing the proposed action.

4) The Department shall review the wetland compensation plan and determine if the plan is likely to result in the successful establishment of a replacement wetland and meets the overall goals of the Act. Unless otherwise stated in the AAP, the Department will provide one of 2 responses to the agency or applicant proposing the action within 45 days after receipt of the wetland compensation plan:

A) That the plan meets the overall goal of the Act, is likely to result in the successful establishment of a replacement wetland and provides the proper wetland compensation in accordance with this Part. A letter will be sent indicating that the agency or applicant may proceed with implementation of the plan.

B) That the plan does not meet the overall goal of the Act and/or will not likely result in the successful establishment of a replacement wetland. The Department shall notify the applicant in writing that the plan fails to meet the intent of the Act. The Department may include recommendations that, if implemented, will bring the plan into compliance with the Act. It shall be the agency's or applicant's responsibility to revise the plan and submit a plan that complies with the Act and this Part. The Department shall not unreasonably withhold approval of an applicant's wetland compensation plan.

5) Department approval of a wetland compensation plan is valid for a period of 3 years following the issuance of written Department approval to proceed. The Department shall grant an extension without modification to the plan upon demonstration by the agency or applicant that conditions at the site have remained substantially unchanged. A wetland compensation plan is not complete until all elements of the plan have been successfully implemented by the agency or applicant and approved by the Department.

6) The agency or applicant shall submit status reports to the Department to demonstrate progress towards implementation of the wetland compensation plan. These reports shall include: A) Post construction site evaluation report. This report shall be submitted within 90 days after the initial construction, planting and all associated work on the site plan have been completed;

B) Status reports. Up to 4 annual reports on the status of the replacement wetlands and associated buffer as provided for in the wetland compensation plan shall be provided to the Department;

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- C) Final report. A final report on the status of the replacement wetland and associated buffer. The final report is due 5 years after implementation of the wetland compensation plan; and
- D) Compensation plan; and
- 7) Unless the Department otherwise allows, compensation shall occur either prior to or concurrently with the activity for which a wetland impact determination is sought. Compensation for adverse impacts to a wetland, its functions, or associated buffer area shall provide all details associated with the transfer. Compensation shall be accomplished using best technology currently available, performance standards and effective monitoring. The Department shall establish guidance for locating and developing wetland compensation plans and standards to ensure that a wetland compensation project is completed as planned to measure the success of compensation projects and correct compensation projects that fail. Use of uplands for wetland compensation sites are generally less suitable than lower lying lands and their use is discouraged. Every effort should be made to avoid the use of upland sites classified as "prime farmland" by the USDA Natural Resources Conservation Service.

- 8) The compensation rate for adverse wetland impacts has been developed based upon wetland quality, function, type, degree of adverse impact, and location of the compensation site. Compensation ratios have been made progressively higher to encourage avoidance and minimization of adverse impacts to wetlands. The following table of wetland compensation ratios shall be used to determine the final value of compensation required for an action that causes an adverse wetland impact.

Location of the Replacement Wetland

Degree of Adverse Impact	On-Site	Off-Site	Out-of-Basin
Min.*	1.0:1****	1.5:1	2.0:1
Alt.	1.5:1****		
Sig.**	1.5:1	2.0:1	3.0:1
Dest.***	2.5:1	4.0:1	5.5:1

The following explanations are provided for the abbreviations used in the above table:

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- * Min. Alt. equals minimal alteration;
- ** Sig. Alt. equals significant alteration; and
- *** Dest. equals destruction.
- **** The 1.01 ratio applies to all other types of wetland vegetation, substrate, or wetland type except those wetlands that have woody vegetation.
- ***** This ratio applies if the vegetation of the adversely impacted wetland is woody.

The ratios in the above table apply, unless the adversely impacted wetland has one or more of the following situations present: This includes:

- A) The presence of a State or federally listed endangered and threatened species. (Listed plants or mussels shall be deemed "present" if individuals or populations occur within the area that is to be adversely impacted by a proposed action. For mobile species, "presence" shall be based on the existence of confirmed nesting or breeding sites in the area to be adversely impacted by the proposed action.)
- B) The presence of essential habitat of a State or federally listed endangered and threatened species.
- C) The presence of an Illinois Natural Area Inventory Site (INAI). The INAI is maintained and updated by the Department following the criteria and methodology described by Jack White, 1978, in the Illinois Natural Area Inventory - Technical Report, University of Illinois Department of Landscape Architecture, p 426.
- D) A wetland that is comprised of a plant community that receives a floristic quality native index score of 20 or more and/or a native mean coefficient of conservatism of 4.0 or greater using the procedure described in Plants of the Chicago Region (Swink and Wilhelm 94).
- E) If any of the situations described in subsection (c)(8)(A) through (D) of this Section occur, the compensation ratio used to determine the amount of wetland compensation required is always 5:5:1.
- F) Compensation ratios refer to replacement area, quantified wetland functions, or dollar value when compared to the wetland area that is adversely impacted. The procedure for computing wetland compensation requirements shall be to multiply the appropriate wetland compensation ratio by the unit of compensation (replacement area, function and/or monetary contribution). Replacement area refers to the amount of wetland compensation required and is computed by multiplying the wetland area that is adversely impacted by the appropriate compensation ratio. Wetland function refers to one or more of the physical processes identified in TILCS 830/1-2. Use of this alternative is dependent upon

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adoption of a scientifically valid procedure as provided in Section 1000.80 of this Part. Functional units shall be computed separately for each adversely impacted wetland type. These units shall be multiplied by the appropriate wetland compensation ratio. Compensation requirements for each wetland type shall then be aggregated to determine the total amount of wetland compensation required. If this procedure is used, in no instance shall the replacement amount of a wetland be less than the amount of compensation computed using replacement area. Determination of dollar value shall be based upon the fair market value of the adversely impacted wetland, normal and customary cost for the establishment of a replacement wetland (including all planning, engineering, construction, planting and monitoring cost), and operation and maintenance cost of the area for a minimum of 10 years. Dollar value shall be established for an acre of replacement wetland. This dollar value shall be multiplied by the number of wetland acres adversely impacted and the appropriate compensation ratio to determine the total monetary compensation required.

G) The agency or applicant shall request the approval of the Department in the method of compensation to be used. The Department shall not unreasonably withhold its approval. The first priority method of wetland compensation shall be to use replacement area. The second priority methods of wetland compensation shall be to use wetland function and dollar value. Use of the wetland function method is dependent upon the development and adoption of scientifically valid procedures for the identification and quantification of wetland functions.

H) An agency or applicant may request approval to use existing public lands for wetland compensation projects. The Department shall have the final approval on the use of existing public lands for this purpose.

9) If an agency or applicant is not able to develop a sound wetland compensation plan that meets the objectives of the Act or if unique opportunities exist to further the goals of the Act through another means, an agency or applicant may make a formal request to the Department to not require the establishment of the same type of wetland or a replacement wetland as a component of a wetland compensation plan. The Department shall consider such request and may approve:

- A) The acquisition of high quality wetlands and associated buffer;
- B) The funding of needed relevant research; or
- C) Development of a wetland compensation Plan that includes replacement of the same and different wetland types as the wetland that was adversely impacted. If either the

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- alternative in subsection (9)(A) or (B) is approved, the Department shall determine the dollar value that must be provided to meet the compensation requirement.
- d) The Department may revoke its approval of a wetland determination or a wetland compensation plan for cause, including violation of conditions of approval, obtaining approval by misrepresentation or failing to disclose a relevant or material fact. The Department shall notify the agency or applicant in writing and provide an opportunity for response.

- e) An agency may request development of a category of actions called Programmatic Actions for inclusion in an Agency Action Plan. Actions must meet the following criteria in order to be placed in the category of Programmatic Actions:
- 1) They must be repetitive actions for the repair, maintenance, or improvement of existing structures or rights-of-way; and
 - 2) Have no practicable alternatives that would avoid an adverse wetland impact. Actions included in this category may involve the acquisition of additional land to accommodate the work, provided that it is contiguous to the property on which an existing structure is located and it meets the criteria prescribed in subsections (e)(1) and (2) of this Section. Adverse wetland impacts resulting from projects carried out under this subsection shall require compensation according the wetland compensation matrix defined in subsection (c)(8) of this Section.

Section 1090.60 Analysis of Alternatives

- a) The Department shall not approve a wetland impact determination unless the Department finds that the agency or applicant has demonstrated that the activity:
- 1) Is water dependent and has no other practicable alternative, or is not water dependent and that alternative designs and alternative sites are not available;
 - 2) Minimizes alteration or impairment of the wetland and its associated buffer area; and
 - 3) Is in compliance with the Illinois Endangered Species Act and the Illinois Natural Areas Preservation Act.
- b) In considering whether a practicable alternative to the proposed activity exists, the Department shall consider whether:
- 1) A modification in the size, scope, configuration, or density of the project for which the wetland impact determination is sought and all alternative designs that would result in a less adverse impact on the wetland have been considered consistent with applicable established minimum standards for safe design and operation of the project;
 - 2) The basic purpose of the project would still be accomplished if the project is modified, and whether the basic purpose has been so narrowly defined as to disqualify all but a single site; and

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- 3) The agency or applicant has made reasonable attempts to remove or accommodate constraints, such as inadequate zoning, infrastructure, or parcel size.
- c) For all project actions, it is presumed that a practicable alternative that does not adversely impact a wetland exists. It is the responsibility of the agency or applicant to demonstrate that practicable alternatives do not exist for projects that will cause an adverse wetland impact.

Section 1090.70 Wetland Compensation Accounts

- a) The establishment of a wetland compensation account, the determination of a project's eligibility for use of an account, and the selection of wetland compensation account sites shall be approved by the Department in compliance with this Part. The consolidation of multiple small compensatory mitigation projects for adverse impacts to degraded wetlands allows for economies of scale in planning, implementation, and maintenance. Wetland compensation accounts are a form of compensatory mitigation that results in the establishment of large-scale wetland complexes that will be professionally managed and maintained in perpetuity for the benefit of the general public.
- b) Management of a wetland compensation account shall include both operation and maintenance of individual wetland sites and a system of accounting to establish account credits and debits. Credits and debits shall be the currency of the account and shall be measured in either replacement area, quantified wetland functions or dollar value by wetland type. The unit of measure shall be standard for all wetland compensation accounts.
- 1) The Department shall make a formal determination of all credits and debits to the wetland compensation account.
- 2) Perpetual maintenance of a replacement wetland is the responsibility of the agency or applicant implementing a wetland compensation plan. This responsibility shall be transferred to the unit responsible for managing the wetland compensation site(s). The minimum dollar value of a credit or debit shall be based upon the factors listed in Section 1090.50(c)(8) of this Part.
- c) The Department shall make a formal determination of compensation account credits that have been generated and are available for use at each wetland compensation account site. This formal determination is known as credit certification. Credit certification shall be based upon units within a compensation account site meeting defined performance standards. Account credits shall be placed into one of the 3 following categories:
- 1) Certified credit - A credit that meets all performance standards;
 - 2) Conditionally certified credit - A credit that shows reasonable progress towards becoming a certified credit; or
 - 3) Uncertified credit - Credit that is anticipated to become a

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- certified credit as part of a planned wetland compensation account site but which does not meet the performance standards for either a certified or conditionally certified credit. Uncertified credits are used to anticipate the amount and availability of future certified credits.
- d) Wetland compensation accounts are a means of establishing wetlands and generating compensation account credits in advance of adverse wetland impacts from a specific project. An agency or applicant must request approval from the Department in order to use uncertified credits at an individual wetland compensation site. The Department shall consider this request and shall only approve the use of up to 30% of the total anticipated certified credits of an individual wetland compensation site. Use of uncertified credits shall be limited to circumstances where the agency has no practicable alternative for developing an individual wetland compensation site and in which it would serve the best interest of the wetland resource.
- e) Preservation of wetlands shall be considered for wetland compensation account credit only in exceptional circumstances such as an existing wetland of extremely high functional value, where incorporation of the wetland into the compensation account further enhances or protect its natural resource value, and where the existing wetland comprises less than 50% of the wetland compensation account site.
- f) Compensation account sites are an aggregation of multiple wetland compensation projects and are generally larger in size than individual wetland compensation projects. Therefore these areas shall be held to a higher performance standard than individual wetland compensation projects.
- g) An established wetland compensation account site must be dedicated to maintaining the designated wetland functions and values to the exclusion of other conflicting uses.
- h) In cooperation with the Interagency Wetland Committee, the Department shall develop guidelines and policies for the establishment, implementation, and management of wetland compensation accounts that are compatible with federal policies on wetland mitigation banking.
- 1) In cooperation with the Interagency Wetland Committee, the Department shall develop a statewide plan for the establishment of a wetland compensation accounting (mitigation banking) system. The development of all compensation accounting sites shall be compatible with the goals of this plan.

Section 1090.80 Technical Procedures

The Interagency Wetlands Committee may request of the Department, or the Department may initiate actions to develop, standardized technical procedures for the implementation of this Part. Both the Department and the Committee will receive and consider public comment on proposed technical procedures, and the Department will attempt to notify associations whose members will be expected to utilize any new technical procedures. Technical procedures shall

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- be recommended by the Department and receive concurrence by the Interagency Wetlands Committee. Technical procedures adopted for implementation of the Act may include but are not limited to the following:
- a) Jurisdictional wetland delineation procedures;
 - b) Restoration and creation procedures;
 - c) Performance standards for certifying and conditionally certifying account credits; and
 - d) Process to evaluate the positive and negative impacts that may result from a project action.

Section 1090.90 Transfer and Management of Wetland Compensation Areas

- a) Wetland Compensation Areas
The transfer of wetland compensation areas, associated buffers and the responsibility for operation and maintenance is subject to approval by the Department. Prior to the transfer of responsibilities, the agency or applicant must submit a written request to the Department. The Department shall approve all requests for the transfer of wetland compensation areas unless deficiencies are found in one or more of the conditions outlined below:
 - 1) That the entity has the legal authority to receive, hold, and manage the site;
 - 2) That the entity has the ability to provide competent professional management of the site; and
 - 3) That the entity has executed a legally binding agreement that will fulfill all obligations of the agency or applicant related to the approved wetland compensation plan and provisions of this Part.
- b) Transfer to the Department
An agency may request that the Department accept fee simple or easement transfer of a wetland compensation area and an associated buffer area along with the responsibility of managing, operating and maintaining a site. Acceptance of these sites will be at the discretion of the Department. Criteria which the Department may use to decide on the acceptance of a site shall include but not limited to the following:
 - 1) Proximity to existing Department owned/managed lands;
 - 2) Size;
 - 3) Development of a site management agreement;
 - 4) Compatibility with existing and long term site management objectives; and
 - 5) Amount of funding provided for the long term operation and maintenance; and
- c) Transfer of other wetlands to non-State agencies
 - 1) If State-owned property intended for sale, exchange, or release contains wetlands that are not compensation wetlands, the agency proposing the sale, exchange, or release shall require that the

utilize any new technical procedures. Technical procedures shall

proposeing the sale, exchange, or release shall require that the

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buyer grant a conservation easement, which shall contain provisions to protect the wetlands and associated buffer areas from adverse impacts. Such easements shall be written and recorded pursuant to the Real Property Conservation Rights Act [765 ILCS 120].

- 2) The agency proposing the sale, exchange, or release shall attempt to have a unit of local government be the grantees of the easement. If a unit of local government cannot be obtained, the agency shall attempt to have an acceptable not-for profit corporation or charitable trust be the grantees. The grantee shall agree to monitor and enforce the easement pursuant to the procedure in Section 4 of the Real Property Conservation Rights Act [765 ILCS 120/4]. If the grantee brings a successful action against a violating landowner, neither the agency that sold, exchanged, or released the property nor the Department shall share in the damages.
- 3) If a unit of local government or a not-for-profit entity cannot be obtained, the agency proposing the sale, exchange, or release shall reserve conservation rights in its deed or release document and transfer those rights to the Department. The Department shall not be prevented from entering into additional agreements with other agencies or entities in complying with its obligations as grantee.
- 4) Prior to the sale, exchange, or release of these lands, the agency must submit a written request to the Department. The Department shall approve all requests for the sale, exchange or release of those lands, unless deficiencies are found in ability of the grantee to monitor and enforce its obligations. The Department shall provide a decision on a request for the sale, exchange or release of lands within 60 days after receiving the request.

Section 1090.100 Appeals

An Agency or applicant may appeal a decision made by the Department, as the result of this Part, through the Administrative Appeals Process pursuant to 17 Ill. Adm. Code 2530 - Department Formal Hearings Conducted for Rulemaking and Contested Cases.

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Section 1090. EXHIBIT A Drainage Basins for the Evaluation of Wetland Resources

